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5 **IN THE SUPREME COURT**
6 **STATE OF ARIZONA**

8 PETITION TO ESTABLISH A RULE
9 SETTING GUIDELINES FOR JURY
10 SERVICE BY COURT EMPLOYEES

Supreme Court No. R-09-0016

**Comment of the State Bar of Arizona
on Petition to Establish a Rule Setting
Guidelines for Jury Service by Court
Employees**

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14 The State Bar of Arizona respectfully opposes the petition to establish a rule
15 setting guidelines for jury service by court employees.¹ The petitioner argues that such a
16 rule is necessary to resolve two potential problems: (1) “a person’s contact with a court
17 employee in their employee capacity may give rise to questions of impartiality if that
18 employee also later serves as a juror in a case involving that person”; and (2) “a
19 litigant’s counsel in one case may have other dealings with the same court on another
20 case, which dealings may bring the counsel in contact with a court employee who is
21 [sic] also ends up serving as a juror in a case before that court.” The proposed text of
22 the rule is as follows:

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26 ¹ The petitioner does not specify the Rule he seeks to add/amend, but Rule 47 of
the Arizona Rules of Civil Procedure is the current Rule regarding jurors in civil trials.

1 Any person who is an employee of a court (whether paid or
2 unpaid) may not serve as a juror in any matter before any
3 division of that same court. In such case, when the person is
4 selected for jury service, the Jury Commissioner shall direct them
5 to serve as a juror in a different court within that jurisdiction.

6 For the following reasons, and as discussed more fully below, the State Bar does
7 not believe that the proposed rule should be adopted: (1) the proposed rule seeks a
8 substantive change more appropriate for the legislature; (2) the proposed rule is
9 unnecessary because the current Rule 47 already contains provisions for resolving the
10 issues raised; and (3) the proposed rule is overbroad in the scope of court employees it
11 would disqualify.

12 **PROPOSED RULE SETTING GUIDELINES FOR JURY SERVICE**
13 **BY COURT EMPLOYEES SHOULD NOT BE ADOPTED**

14 **1. The Proposed Rule Seeks a Substantive Change More Appropriate**
15 **for the Legislature.**

16 The petition seeks to add a new category of persons (i.e., court employees) who
17 are disqualified from jury service. As shown by the current scheme of statutes and rules,
18 any such change is an issue more appropriate for legislation rather than a rule change.

19 The groups of persons absolutely disqualified from jury service in a matter are set
20 forth by statute. Namely, A.R.S. § 21-211 states that “[w]itnesses in the action,”
21 “[p]ersons interested directly or indirectly in the matter,” “[p]ersons related by
22 consanguinity or affinity within the fourth degree to either of the parties to the action,”
23 and “[p]ersons biased or prejudiced in favor of or against either of the parties” are
24 “disqualified to serve as jurors in any particular action.”

25 By contrast, the Arizona Rules of Civil Procedure do not establish any categories
26 of persons absolutely disqualified from jury service. Instead, Rule 47(c) lists the
grounds upon which jurors may be challenged for cause.

Such a substantive change as adding a new category of persons absolutely
disqualified from jury service in a matter is better left to the legislature rather than

1 through a change to the Rules of Civil Procedure.

2 **2. The Proposed Rule Is Unnecessary.**

3 According to the petitioner, while jury duty is an important obligation for all
4 citizens, “the impartiality of the jury system is of paramount importance.” The
5 petitioner then takes the position that the proposed rule provides a solution to the
6 potential conflict between these two objectives. The current system, however, already
7 provides the tools for handling any such potential conflict and for assuring impartial
8 jurors. The proposed rule is thus unnecessary.

9 In support of the proposed rule disqualifying court employees from serving as
10 jurors in any case before that court, the petitioner raises an example of a matter he was
11 involved in several years back. According to the petitioner, in that matter, a party
12 (“Party”) suffered an adverse jury verdict in Case A. A member of the jury panel in
13 Case A was employed as a judicial assistant in another division of the same court and
14 knew Party from another lawsuit before that division in which Party had been a litigant
15 (Case B). According to Party, Case B had not gone well and he believed that the judge
16 and staff in Case B did not have a good impression of him and that thus the judicial
17 assistant who served as a juror in Case A might have been biased against him.

18 This example actually highlights why the proposed rule change is unnecessary.
19 The petition does not take the position that it was the mere fact that the juror knew Party
20 from Case B that should have disqualified her from jury service in Case A. The petition
21 instead takes the position that she should have been disqualified because she was not
22 impartial but rather was biased against Party due to the impression she had formed
23 against him in Case B. The Rules, however, already provide a method for disqualifying
24 a juror in such a set of circumstances. Namely, a juror may be challenged for cause if he
25 or she has “a state of mind evincing enmity or bias for or against either party.” ARIZ. R.
26 CIV. P. 47(c)(5). *See also* A.R.S. § 21-211(4) (disqualifying “[p]ersons biased or

1 prejudiced in favor of or against either of the parties”).

2 In addition, the Rules provide a mechanism for discovering the sort of
3 information that in Case A would have shown a relationship between the prospective
4 juror and Party and demonstrated any bias disqualifying the prospective juror from
5 serving. By rule, the court is to “furnish counsel with the name, zip code, employment
6 status, occupation, employer, residency status, education level, prior jury duty
7 experience, and felony conviction status of prospective jurors in writing before the voir
8 dire examination is conducted.” ARIZ. R. CIV. P. 47(a)(4). In addition, the court is to
9 “conduct a thorough oral examination of prospective jurors” and “permit [a] party a
10 reasonable time to conduct a further oral examination of the prospective jurors.” ARIZ.
11 R. CIV. P. 47(b)(3).

12 3. The Proposed Rule Is Overbroad.

13 The proposed new rule would disqualify “[a]ny person who is an employee of a
14 court (whether paid or unpaid)” from serving as a juror in any case in that same court.
15 As discussed above, the stated rationale for such a rule is to prevent court employees
16 from serving as jurors on cases in which they are partial because of their dealings with
17 one of the parties or lawyers in another lawsuit(s) through their capacity as a court
18 employee. The proposed rule, however, goes beyond such limited situations.

19 First, the proposed rule would disqualify court employees from serving in many
20 cases where they have had no dealings of any kind with any of the parties or lawyers.
21 Many court employees’ jobs do not even entail their becoming involved with litigants or
22 lawyers (e.g., probation officers, security staff, court clerks, and court administrative
23 staff working in departments such as human resources, information systems, and
24 accounting). In addition, even those court employees who are routinely exposed to
25 litigants and lawyers (e.g., judges, judicial assistants, bailiffs, etc.) are unlikely to know
26 any specific litigant or lawyer in any given jury trial. For instance, in the Arizona

1 Superior Court for Maricopa County, there are currently about 95 judges and 55
2 commissioners before whom attorneys and litigants might appear.

3 Second, the proposed rule would disqualify a court employee from jury service
4 regardless of whether the employee held any biases for or against a party or lawyer.
5 Even in those instances where a prospective juror knows a party or lawyer through their
6 professional dealings with them as a court employee, such dealings should not
7 automatically disqualify them as a juror. *Cf. State v. Hill*, 174 Ariz. 313, 319, 848 P.2d
8 1375, 1381 (1993) (“A juror who knows some of the people involved in a particular case
9 is not automatically barred from serving on a jury.”). As recognized by the petition
10 itself, the true question is whether a juror can be impartial. The proposed rule, though,
11 goes beyond disqualifying court employees from jury service due to their inability to be
12 impartial in a case.

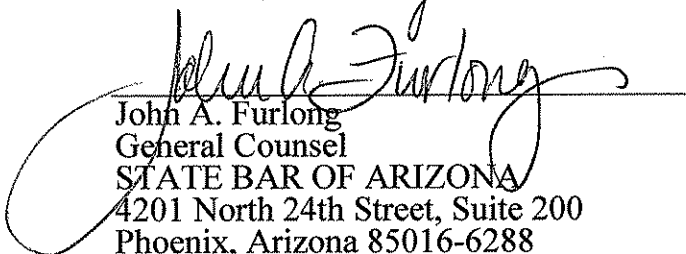
13 While the proposed rule is overbroad for the reasons discussed above, it is at the
14 same time overly narrow in preventing the very problems the petition cites in support of
15 the rule. Namely, the proposed rule would allow court employees to serve as jurors in
16 cases pending before another court in the same jurisdiction (e.g., a Superior Court
17 employee could serve on a jury in a municipal court). The cited problems of a court
18 employee knowing one of the parties or lawyers from another case, however, are just as
19 likely to arise where the employee is a prospective juror in another court in the same
20 jurisdiction. Lawyers and litigants are not limited to any single court within a jurisdiction
21 but rather could have cases before multiple courts (e.g., dealings with a Superior Court
22 employee in one case and then a jury trial in a municipal court in another case).

23 Conclusion

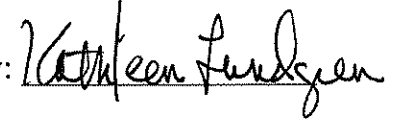
24 The proposed rule is meant to solve potential problems of bias and partiality of
25 court employees serving as jurors due to their professional dealings with litigants and
26 lawyers in other cases. The proposed rule, however, is overbroad, disqualifying court

1 employees in many situations where there would be no questions of bias or partiality. In
2 addition, there are already mechanisms in place under the current Rules for resolving any
3 potential problems of bias and partiality of prospective jurors due to their status as court
4 employees. For these and the other reasons discussed above, the State Bar of Arizona
5 respectfully requests that the Court deny the petition and not establish the proposed rule
6 setting guidelines for jury service by court employees.

7 RESPECTFULLY SUBMITTED this 1st day of February, 2010.

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17 By: 
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